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**December 30, 2008**

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 24, 2008

Case Number: TSO-0646

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not restore the individual's access authorization at this time.

**I. Background**

During a background investigation of the individual for an upgrade of her security clearance, sources reported that the individual had identified herself to them as a crack cocaine addict. Exhibit 8 at 14. In a subsequent Personnel Security Interview (PSI) conducted on May 16, 2007, the individual revealed that she had used crack cocaine between 1990 and 2002, *id.* at 13-15, though she had not disclosed this use on Questionnaires for National Security Positions (QNSPs) she completed in 1993, 2001, and 2006. Exhibits 9, 10, 11. The Local Security Office (LSO) ultimately determined that the derogatory information concerning the individual created a substantial doubt about her eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to her. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual (1) has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a Personnel

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Qualifications Statement, a personnel security interview, in written or oral statements made in response to an official inquiry regarding her eligibility for DOE access authorization, or proceedings conducted pursuant to Part 710 Sections 710.20 through 710.31; (2) has trafficked in, sold, transferred, possessed, used or experimented with a drug or other substance listed in the schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970, except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law; and (3) has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation or duress which may cause her to act contrary to the best interests of the national security. Exhibit 3 (citing 10 C.F.R. § 710.8(f), (k), (l)).

The Notification Letter informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on September 15, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, her husband, her supervisor, and two coworkers. The DOE Counsel submitted eight exhibits prior to the hearing and four exhibits at the hearing; counsel for the individual presented six exhibits.

## **II. Regulatory Standard**

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” *i.e.*, “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>2</sup> After due deliberation, I have determined that the

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<sup>2</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for

individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

### **III. The Notification Letter and the Security Concerns at Issue**

As the basis for security concerns under Criteria F and L, the Notification Letter cites the fact that, despite having used crack cocaine from 1990 to 2002, the individual answered "no" to the following question on QNSPs she completed in 1993, 2001, and 2006: "Since the age of 16 or for the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Exhibits 3 at 4, 5; Exhibits 9, 10, 11. The individual's failure to provide truthful responses in these three QNSPs raises questions about her reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at ¶ 15 ("Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.")

As the basis for security concerns under Criteria K and L, the Notification Letter cites the individual's past use of crack cocaine. Exhibit 3 at 4-5. There are significant security concerns associated with illegal drug usage. Engaging in criminal conduct can raise questions about a person's ability or willingness to comply with laws, rules, and regulations. *See Adjudicative Guidelines* at ¶ 24. Moreover, illegal drugs can impair a person's judgment which, in turn, can raise questions about the person's reliability and trustworthiness. *Id.*

### **IV. Hearing Testimony**

#### **A. The Individual**

The individual held a security clearance from 1994 until it was suspended in August 2007, with the exception of a few months in 2001 when she had been laid off. Hearing Transcript [hereinafter Tr.] at 34-35; Exhibit 1. She began to use cocaine in powder form in 1990, later switching to crack cocaine, which she used "weekly" until 2003. Tr. at 16-17, 22, 32-33. Prior to 2003, she "wasn't ready to quit." *Id.* at 40. "[I]t's very destructive. I don't know how else to explain it. . . . I knew I could quit. I knew I could because that's -- it wasn't how I was brought up." *Id.* at 41. In 2003, her son began kindergarten, and the individual testified that he began to notice her changes in behavior when she used crack, and would question her about it. *Id.* at 18-19. That year, she quit using crack, without the aid of professional help. *Id.* at 17; 20. "I did it on my own. I did talk with my medical doctor a little bit about it. . . . I just knew I had to do it

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pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

and I did.” *Id.* at 20-21. The same year, she left the town where she lived and where she purchased drugs and moved to another town approximately 30 miles away. *Id.* at 17. “I knew I had to get away from those folks. That’s number one, get away from the people you associate with.” *Id.* at 41. The move helped her stay away from drugs. *Id.* at 21.

The individual testified that she has not used any illegal drugs since 2003, and submitted as exhibits records of three drug tests, one taken in 2006 and two in 2008. *Id.* at 17, 19; Exhibits A, B, C. Asked why her claim to be drug free should be believed now, after she has been dishonest in the past, the individual responded, “I think just from my attendance, my employment. My upper management being willing to accommodate me, my financial situation, my appearance, my family.” *Id.* at 17. She no longer sees any of the people she used to associate with in her former town of residence. *Tr.* at 28. Three years ago, she began dating her current husband, whom she married in January 2007. *Id.* at 21-22. She testified that her husband, who also holds a security clearance, would not tolerate her using drugs. *Id.* at 21.

The individual stated that she did not disclose her drug use on the QNSPs she completed because she was scared of losing her job. *Id.* at 16. Asked what she was thinking when she provided the false answers, she responded that she knew it “was wrong,” but that she was “still afraid.” *Id.* at 29. She “wasn’t ready to quit” using drugs and was “just hoping I wouldn’t get caught.” *Id.* In my questioning of the individual, I asked her why she provided the same false answer as recently as March 2006, Exhibit 9, after she had stopped using drugs in 2003. *Id.* at 33. She responded that she “didn’t want to let anybody down. And I was just hoping at the time that nothing would come of it.” *Tr.* at 33-34.

The individual’s employer requested an upgrade of her clearance in March 2006, which the individual knew would require a reinvestigation by the U.S. Office of Personnel Management (OPM). *Id.* at 42. “[T]hat’s why I was hesitant to even take the job, because a Q was required, and I didn’t know if I could get it.” *Id.* at 43. She revealed her drug use in May 2007, during the PSI that followed the OPM investigation. Exhibit 8 at 13-14. “I knew the orders, I knew the procedures. I couldn’t -- I couldn’t do it anymore. I couldn’t lie about it anymore. I knew the right thing to do, both spiritually and work ethics. I just wanted it out in the open.” *Tr.* at 22. She testified that, prior to the PSI, she was unaware that any of the individuals interviewed by OPM had reported knowledge of her drug use, *id.* at 36-37, nor had anybody who had been interviewed contacted her before the PSI. After she revealed her drug use in the PSI, the interviewer told her that “there were several people in your background [investigation] that did say you, uh, even had identified yourself as a crack addict to them.” Exhibit 8 at 14. “I was shocked.” *Id.* at 37.

As for the future, the individual testified that she could not imagine anything that would lead her to use crack in the future, even if faced with stress, because she knows the drug “causes more stress. . . . I lost -- I almost lost my job . . . . I lost my husband. I had a business. I lost the business. Need I go on? You know, I was rock bottom.” *Id.* at 23. She stated that she will not lie to DOE in the future because “I have no reason to lie anymore. You know, my husband accepts

me. I feel at peace. My employer, you know -- it's not that you fall down, it's how you get back up and move on.” *Id.* at 25.

### **B. The Individual’s Husband**

The individual’s husband has known her as an acquaintance in the workplace since the early to mid-1990s, and began dating her during the year prior to marrying her in January 2007. *Id.* at 77-78. While they were dating, the individual told him of her prior drug use and the fact that she had not been truthful with the DOE regarding that use. *Id.* at 79. He testified that the individual’s has not used drugs since they began dating, and that there are no illegal drugs in their home. *Id.* at 79-80. He would not tolerate his wife’s use of illegal drugs, and testified that if he ever found that she was using drugs, the “ring would come off.” *Id.* at 80. For support in staying off of drugs, the individual “has family. She has me. She has our kids. You know, they're a positive influence.” *Id.* at 80-81. The individual’s husband also cited her church as a source of support and positive influence. *Id.* at 81. He believes his wife is honest and trustworthy and regrets her past behavior. *Id.* at 82-83.

After he found out about her past drug use and dishonesty about it, the individual’s husband testified that he “kind of left it up to her” as to what she needed to do about it. *Id.* at 83. “[I]t was a big burden on her. I knew that. She wanted to get it out of the way or discuss it with someone that we could fix this problem.” *Id.* Asked whether there was any discussion between them as to how or when to come forward, he replied, “I believe someone was talking to her, and I don't know the dates and the people, you know, that they were, but she just got tired of it hanging over her head and she wanted to get it over with.” *Id.* at 85.

### **C. The Individual’s Supervisor**

The individual’s supervisor testified that she has known the individual since June of 2005, when she began working for her. *Id.* at 47-48. She knows the individual only through work and does not otherwise socialize with her. *Id.* at 48. She is aware that the individual had a problem with drugs in the past and provided false information to the DOE. *Id.* Nonetheless, she considers the individual “very trustworthy” and has never found her to be untruthful to her or anyone else in the workplace. *Id.* at 48-49. The individual’s supervisor stated that she “[a]bsolutely” has no reason to doubt the individual’s credibility or trustworthiness. *Id.* at 49.

Despite knowing about the individual’s past falsifications, she trusts the individual because of her “belief that people recognize their problems. They deal with them. They correct them, and they don't relapse.” *Id.* at 51-52. Because the supervisor knew the individual in March 2006, when she most recently falsified a QNSP, I asked the supervisor if she saw any differences in the individual now that would lead her to believe she would not engage in similar behavior in the future. The supervisor replied that she has “complete confidence in her regret for her mistakes, and I would have no problems going forward with her. None whatsoever. I support her completely.” *Id.* at 54.

She has never known the individual to be under the influence of drugs, and if she were, the supervisor stated that she “would have an obligation to report her, and then I would also have a personal concern about it.” *Id.* at 50. Regarding the support network available to the individual, her supervisor stated that she has “met her husband. I’ve met her child. I have very positive feelings about her family life. The discussions that we have had through this period of three years makes me feel that she is a strong person, that she is sincere, and I have faith in her character.” *Id.* at 52.

#### **D. The Individual’s Coworker I**

The first of the individual’s coworkers to testify has known the individual since 1991 or 1992. *Id.* at 55. He did not, however, know of the individual’s drug use at the time it took place, though he “could just see that she had changed in some way.” *Id.* at 56. He also noted “the weight loss and the edginess about her . . . .” *Id.* at 62. Recently, he has worked more closely with the individual, first for four or five weeks when he was in a temporary managerial position, and then after she was moved to a new job when her clearance was suspended in August 2007. *Id.* at 57; Exhibit 1. In the latter role, he works closely with her “[a]ll the time.” *Id.* at 58. In that time, he has seen no evidence that the individual has been using drugs. *Id.* He testified that he thinks the individual is “very truthful.” *Id.*

Though he was aware of the charges that led to her clearance being suspended, he testified that the individual “[n]ever hid anything that I’m aware of. Not to me.” *Id.* at 59. The coworker stated that he told her he wanted to testify on her behalf. *Id.* “She did not ask me.” *Id.* Despite her past falsifications, the coworker is not concerned

because I know she -- she is a different -- to me a different person. She's married, got a child. To me, just a perfect mother and an excellent worker. So I have no -- I have no problem with her at all. I believe I could get a straight answer, truthful answer, and trust her with information without any problem.

*Id.* at 64.

#### **E The Individual’s Coworker II**

The second coworker of the individual to testify at the hearing has known her since about 2000. *Id.* at 67. Though, at that time, he did not work with her on a daily basis, “the reputation was that she was a talented person but had some absentee problems, and so I really didn’t get involved in that because it didn’t involve me directly. But I was aware of it.” *Id.* at 69. He has worked with her daily since her clearance was suspended and she began to work in a different location. *Id.* 68-69, 75-76.

Despite the fact that he knows she has lied to DOE in the past, the coworker stated that he “[a]bsolutely” has no reason to doubt her honesty or trustworthiness. *Id.* at 69. When asked why, the coworker stated that in discussing with her the importance of work performance and

being good with the client . . . she would ask questions that caused me to know that -- or believe that something had changed in her, that those things that might not have been important before like honesty and integrity and dependability and trustworthiness were key in the way that she interacted to me and the way she responded to me.

*Id.* at 69-70.

## **V. Hearing Officer Evaluation of Evidence**

### **A. Illegal Drug Use - Criteria K and L**

As noted above, the use of illegal drugs raises significant security concerns. Those concerns are heightened in this case by the fact that the individual used illegal drugs over a 13-year period, nine of those years while holding a security clearance. Nonetheless, I find that these serious concerns have been sufficiently mitigated in the present case.

Weighing most heavily in the individual's favor is the fact that over five years has now passed since she quit using crack. *See* Adjudicative Guidelines at ¶ 26(a) (listing as a condition that could mitigate concerns arising from illegal drug use that "the behavior happened so long ago, . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"). Because of her past falsifications, which I address separately below, it would be difficult to believe this based solely on the individual's own testimony, though I found her demeanor reflected credibility on this point. However, there is other evidence that supports this finding, including her husband's testimony, the negative results of drug tests, and the changes in the individual noted by the two coworkers who testified on her behalf. I believe that, given the evident effects of her prior crack use, such as absenteeism, weight loss, and "edginess," it would be difficult for the individual to have returned to using crack without others, including coworkers and especially her husband, being aware of it.

Moreover, the individual has taken affirmative steps to remove herself from the environment in which she previously used drugs, most significantly by moving to a new town and not associating with individuals from her former place of residence. These actions, along with her extended period of abstinence, demonstrate the individual's intent to abstain from future drug use, and therefore help mitigate the concern raised by her prior use. *See* Adjudicative Guidelines at ¶ 26(b) (listing as a condition that could mitigate concerns arising from illegal drug use "a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence").

Considering the record as a whole, and in light of the factors noted above, I find that the concerns raised by the individual's past use of illegal drugs have been sufficiently mitigated in this case.

## **B. Falsification - Criteria F and L**

When a security concern arises due to an individual's past falsifications to the DOE, the key issue is whether the individual has brought forward sufficient evidence to demonstrate that she can now be trusted to be consistently honest and truthful with the DOE. In a number of decisions, DOE Hearing Officers have considered the implications of prior falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to admit his falsifications, *compare Personnel Security Hearing*, Case No. VSO-0037 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing*, Case No. VSO-0327 (2000), *affirmed* (OSA, 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing*, Case No. VSO-0327 (2000), *affirmed* (OSA, 2000) (less than a year of truthfulness insufficient to overcome long history of falsification). *See also Personnel Security Hearing*, Case No. VSO-0289 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing*, Case No. VSO-0319 (2000), *affirmed* (OSA, 2000).<sup>3</sup>

Applying these factors to the present case, I am left with unresolved doubts regarding the individual's willingness or ability to provide accurate information to the DOE in the future. The individual concealed her use of crack from the DOE for 13 years, coming forward less than one year and a half prior to the hearing in this matter. During this period of concealment, the individual falsified QNSPs on three occasions, most recently in 2006, well after she had stopped using crack. By her own account, her falsifications were intentional, and driven by her fear of losing her job. *See* Adjudicative Guidelines at ¶ 17(c) (concern could be mitigated where "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"). Though the individual did finally reveal her past drug use in the May 2007 PSI, it is not at all clear to me when, or even if, the individual would have come forward to correct the record had the results of the OPM investigation not required a PSI. *See* Adjudicative Guidelines at ¶ 17(c) (concern could be mitigated where "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts").

Asked whether she will lie to the government in the future, the individual responded, "No, because I have no reason to lie anymore." Tr. at 25. In so far as the individual has commendably stopped using illegal drugs, this does remove one "reason" for the individual to lie. However, my concern is that, in the future, there may be other information that the individual will not want to reveal to the DOE, again for fear of losing her job. It is under these circumstances that the DOE must be able to depend on clearance holders to be consistently

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<sup>3</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.



honest, regardless of the possible consequences. Unfortunately, because of the individual's long, and only recently ended, pattern of falsification and concealment, and the circumstances under which the individual finally came forward with the truth, I cannot find that the concerns in this case have been sufficiently mitigated.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criteria F, K, and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth evidence to sufficiently mitigate the security concerns advanced by the LSO under Criteria K and L relating to her past illegal drug use, but not those concerns raised under Criteria F and L stemming from the individual's past falsifications and concealment. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: December 30, 2008